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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JUNE 14, 2000

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE990786

Ex Parte: In the matter concerning
Rules implementing the State
Corporation Commission's authority
to enforce the Underground Utility
Damage Prevention Act

ORDER PRESCRIBING NOTICE AND INVITING COMMENTS

On December 13, 1999, the State Corporation Commission ("Commission") entered an Order establishing an investigation into the appropriate policies and rules relating to the enforcement of the Underground Utility Damage Prevention Act, Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia. The December 13, 1999, Order invited interested parties to file written comments on or before February 29, 2000, on the issues identified in Appendix A to the Order, which related to enforcement of the Act and the roles to be played by the Commission, utility operators, excavators, notification centers, and other members of the public affected by the Act. Interested parties were encouraged to offer proposed rules corresponding to the issues set forth in Appendix A to the Order. Additionally, the Commission's Order directed the Staff

to file a report summarizing and responding to the comments filed in the docket and proposing revisions, where appropriate, to the Rules for Enforcement of the Underground Utility Damage Prevention Act, adopted in Case No. PUE940071.¹

On March 16, 2000, the Staff, by counsel, filed a Motion seeking an extension of time in which to file the report. In support of its Motion, the Staff noted that approximately sixty interested persons had filed comments, taking diverse positions on the issues posed by the December 13 Order. Among other things, the Staff noted that it needed additional time in which to consider the comments and prepare its report. The Staff requested that it be permitted to file its report on May 26, 2000, rather than April 7, 2000.

On March 23, 2000, we granted the Staff's Motion and directed the Staff to file its report by May 26, 2000.

On May 26, 2000, the Staff filed its report in which it summarized the filed comments; discussed the development of the underground utility damage prevention program in Virginia, enforcement and performance of the program; reviewed national "best practices" relative to damage prevention; proposed

¹ See Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of adopting rules necessary to implement the State Corporation Commission's authority to enforce the Underground Utility Damage Prevention Act, Case No. PUE940071, 1994 S.C.C. Ann. Rept. 422 (Order Adopting Procedural Rules for Enforcement of the Underground Utility Damage Prevention Act, Dec. 20, 1994).

specific revisions and additions to the existing Rules for Enforcement of the Underground Utility Damage Prevention Act, and discussed the proposed rules.

NOW UPON consideration of the comments, the Staff report, the proposed rules, and the Act, the Commission is of the opinion and finds that public notice should be given of the rules proposed by the Staff in its May 26 Report; that interested persons should be afforded an opportunity to file written comments or request a hearing on the proposed rules appended hereto as Appendix 1;² that the notice of the proposed rulemaking should be published in newspapers of general circulation throughout the Commonwealth; and that this Order and proposed rules should be forwarded to the Registrar of Regulations for publication in the Virginia Register of Regulations.

Accordingly, IT IS ORDERED THAT:

(1) A copy of this Order, the proposed rules, and the May 26, 2000, Staff Report shall be made available for public review in the Commission's Document Control Center, located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, during its regular hours of operation.

² The rules appearing in Appendix 1 to this Order have been revised to reflect minor changes and corrections made in contemplation of publication in the Virginia Register of Regulations.

(2) Interested persons may obtain a copy of this Order, together with a copy of the Staff Report and proposed rules upon which comment is sought (Appendix 1 hereto), by directing a request in writing for the same on or before July 19, 2000, to Massoud Tahamtani, Assistant Director, Division of Energy Regulation, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23218. Such requests shall refer to Case No. PUE990786.

(3) On or before August 1, 2000, any interested person desiring to comment upon the proposed "Rules for Enforcement of the Underground Utility Damage Prevention Act" set out in Appendix 1 shall file an original and fifteen (15) copies of such comments in writing with the Clerk of Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, and shall refer to Case No. PUE990786. The comments should set forth the person's interest in the proceeding, his comments on the rules, and if such person objects to certain provisions of the proposed rules, proposed alternative language for the rules.

(4) Any interested person desiring a hearing in this matter shall file an original and fifteen (15) copies of a written request for hearing on or before August 1, 2000, with the Clerk of the Commission and shall state in detail why a hearing is necessary. Such a request shall identify the factual

issues likely to be in dispute upon which the interested person seeks a hearing, together with the evidence expected to be introduced at any hearing convened by the Commission. Requests for hearing shall refer to Case No. PUE990786, and shall be directed to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. If no sufficient request for a hearing is received, the Commission may enter an order promulgating rules based upon the written pleadings and comments filed herein.

(5) On or before July 10, 2000, the Division of Energy Regulation shall cause the following notice to be published as classified advertising on one occasion in newspapers of general circulation throughout the Commonwealth of Virginia:

NOTICE TO THE PUBLIC OF PROPOSED RULES THAT
THE STATE CORPORATION COMMISSION IS
CONSIDERING FOR THE ENFORCEMENT OF THE
UNDERGROUND UTILITY DAMAGE PREVENTION ACT
CASE NO. PUE990786

The Underground Utility Damage Prevention Act, Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia, ("the Act") was revised effective January 1, 1995, and charged the State Corporation Commission ("Commission") with the enforcement of the Act's provisions and adoption of enforcement rules. The Act was revised, among other reasons, to reduce damage to underground utility lines and prevent injuries, inconvenient utility service interruptions, damage to the environment, economic losses resulting from damage to underground utility lines, and possible loss of life.

On December 13, 1999, the Commission issued an Order establishing an investigation to consider revisions to the rules for enforcement of the Act, previously adopted in Case No. PUE940071, pursuant to the authority granted to it in § 56-265.30 of the Code of Virginia. The Commission's December 13, 1999, Order directed the Commission Staff to file a report proposing appropriate revisions to the rules. On May 26, 2000, the Commission Staff filed its report, setting forth its recommended revisions to the rules for the enforcement of the Underground Utility Damage Prevention Act ("proposed rules"). These proposed rules affect utilities, excavators, notification centers, contract locators, and the public generally. Therefore, the Commission is inviting comments and requests for hearing on the rules proposed by the Commission Staff.

A copy of the Order Prescribing Notice and Inviting Comments and the Staff Report, together with the proposed rules upon which comment is sought, may be reviewed from 8:15 a.m. to 5:00 p.m., Monday through Friday, in the State Corporation Commission's Document Control Center, located at 1300 East Main Street, Tyler Building, First Floor, Richmond, Virginia 23219. Interested persons may obtain a copy of the Commission's Order and the proposed rules under consideration, together with the Staff report by directing a written request for the same on or before July 19, 2000, to Massoud Tahamtani, Assistant Director, Division of Energy Regulation, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23218 and referring to Case No. PUE990786.

Any interested person who wishes to comment upon the proposed Rules (Appendix 1 to the Commission's Order Prescribing Notice and Inviting Comments) shall file on or

before August 1, 2000, an original and fifteen (15) copies of his comments with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, and shall refer to Case No. PUE990786. The comments should set forth the person's interest in this proceeding, his comments on the rules, and if the comments object to certain provisions in the proposed rules, proposed alternative language for the rules should be included in the comments.

Any interested person desiring to request a hearing in this matter shall file an original and fifteen (15) copies of a written request for hearing with the Clerk of the Commission at the address set forth above on or before August 1, 2000, and shall state in detail why a hearing is necessary. Such a request should identify the factual issues upon which the interested person seeks hearing, together with the evidence expected to be introduced if a hearing is convened. If no sufficient request for hearing is received, the Commission may enter an order promulgating rules based upon the comments and the written pleadings filed in this proceeding.

All communications to the Commission regarding this proceeding should be directed to the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, and should refer to Case No. PUE990786.

THE DIVISION OF ENERGY REGULATION OF
THE STATE CORPORATION COMMISSION

(6) The Commission's Division of Information Resources shall forthwith cause this Order, together with the proposed Rules for the Enforcement of the Underground Utility Damage

Prevention Act, to be forwarded for publication in the Virginia Register of Regulations.

(7) The Commission's Division of Energy Regulation shall promptly file with the Clerk of the Commission the proof of the publication of the notices required herein.

STATE CORPORATION COMMISSION
Division of Energy Regulation

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**CHAPTER 309.
RULES FOR ENFORCEMENT OF
THE UNDERGROUND UTILITY DAMAGE PREVENTION ACT.**

Article 1.

General Provisions.

20 VAC 5-309-10. Purpose.

These rules delineate procedures used by the State Corporation Commission ("Commission") to enforce the provisions of Chapter 10.3 (§ 56-265.15 et seq.) of Title 56 of the Code of Virginia, also known as the Underground Utility Damage Prevention Act ("Act"). The rules further detail certain standards and requirements for the protection of underground utility lines to facilitate the Commission's enforcement of the Act.

Article 2.

Definitions.

20 VAC 5-309-15. Definitions.

The following words and terms when used in this chapter shall have the following meaning, unless the context clearly indicates otherwise:

"Abandoned utility line" means an underground utility line that is no longer used in connection with storage or conveyance of products listed under the

definition of a "utility line" in § 56-265.15 of the Code of Virginia and is physically disconnected from the operating system.

"Division" means the State Corporation Commission's Division of Energy Regulation.

"Installation records of a utility line" means maps, drawings, diagram, sketches, or any other depictions or descriptions of an underground utility line that reflect the location at the time of installation in a reasonably accurate manner.

"Locate" or "marking" means an operator's or its contract locator's markings of an underground utility line.

Article 3.

Enforcement.

20 VAC 5-309-20. Report of probable violations.

Any person, as defined in § 56-265.15 of the Code of Virginia, may report probable violations of Chapter 10.3 of Title 56 to the Division. The reports of probable violations may be submitted to the Division in writing, by phone, fax, e-mail, or in person. All written reports of probable violations shall include the information requested on SCC Form DPA-1, if available. All probable violations shall be reported to the Division within 30 days of a person becoming aware of the circumstances constituting the probable violations.

20 VAC 5-309-30. Commission staff investigation of probable violations.

Upon receipt of a report of a probable violation, the Commission Staff ("Staff") shall conduct an investigation to examine all the relevant facts regarding the reported probable violation. The investigation may include, among other things, records verification, informal meetings, teleconferences, and photo-documentation. Upon completion of the investigation, the Staff shall review its findings and recommendations with the Advisory Committee established in accordance with § 56-265.31 of the Act.

20 VAC 5-309-40. Advisory Committee review of probable violations.

A. The Advisory Committee ("Committee"), established by the Commission, shall meet on a periodic basis to review probable violations of the Act and the Staff's findings and recommendations relative to such violations. Upon determination by either the Staff or the Committee that a violation may have occurred, and that an enforcement action is required, the Staff shall take one or more of the following actions:

1. Issue a warning letter to the person alleged to have committed the violation ("respondent");
2. Issue an Information Letter to a county, city, or town alleged to have committed the violation;

2. 3. Enter settlement negotiations with the respondent. Upon reaching agreement on settlement terms, the Division shall present the proposed settlement to the Commission for final acceptance or rejection; or

3. 4. Request the issuance of a "Rule to Show Cause" order pursuant to Rule 4:11 (5 VAC 5-10-230) of the Commission's Rules of Practice and Procedure.

B. In the event that the Staff but not the Committee recommends enforcement action, the Staff may request the Commission to issue a rule to show cause to make a final determination regarding any alleged violations of the Act, and shall, as part of its request for enforcement action, report to the Commission the Committee's recommendations and reason or reasons for the Committee's recommendations.

C. As soon as practicable after its establishment, the Committee shall develop and implement a set of bylaws. These bylaws shall delineate the Committee's practice and procedures relative to performing the duties assigned by the Commission, including the review of probable violations of the Act.

D. If deemed necessary, the Committee shall establish one or more subcommittees of experts in the operations covered by the Act. These subcommittees shall assist the Committee in performing its assigned duties.

20 VAC 5-309-50. Commission action.

A. The Commission may accept or reject a proposed settlement to resolve probable violations of the Act. If the Commission rejects a proposed settlement, a public hearing will be scheduled to receive evidence and take appropriate enforcement action as provided by the Commission's Rules of Practice and Procedure (5 VAC 5-10-10 et seq.).

B. If the Commission finds, after a hearing, that a violation has occurred or is continuing, it may issue a remedial order. The remedial order may direct the party or parties to take any action which is consistent with such party's or parties' obligations under the Act, including the payment of a civil penalty as provided by § 56-265.32 of the Code of Virginia. A remedial order issued by the Commission under this section shall be effective upon issuance, in accordance with its terms, unless stayed, suspended, modified or rescinded.

C. If the Commission finds that a violation has occurred or is continuing and presents an immediate potential danger to life, health, property or essential public service, the Commission may issue a temporary injunction and schedule a hearing and require the respondent to show cause why it should not be enjoined on account of the alleged violation or violations of the Act.

20 VAC 5-309-60. Civil penalties.

A. In determining the amount of any civil penalty included in a settlement, the nature, circumstances and gravity of the violation; the degree of the respondent's culpability; the respondent's history of prior offenses; and such other factors as may be appropriate shall be considered.

B. The respondent shall pay a civil penalty that has been assessed or compromised by submitting to the Division a certified check made payable to the Treasurer of Virginia in the correct amount. All such penalties shall be deposited in the Underground Utility Damage Prevention Special Fund and shall be used for administering the regulatory program authorized by the Act. Any excess funds shall be used for public awareness programs established pursuant to subsection B of § 56-265.16:1 of the Code of Virginia.

20 VAC 5-309-70. Petition for reconsideration.

Any person subject to an order from the Virginia State Corporation Commission may petition the Commission for reconsideration of its order under Rule 8:9 (5 VAC 5-10-610) of the Commission's Rules of Practice and Procedure.

20 VAC 5-309-80. Appeals generally.

Any final finding, decision setting the substantive law, order or judgment of the Commission may be appealed only to the Supreme Court of Virginia, subject to § 12.1-39 et seq. of the Code of Virginia, and to Rule 5:21 of that Court.

Article 4.

Administrative Rules.

20 VAC 5-309-90. Data request to the Division.

Upon request, the Division shall provide to any person information or documents gathered by the Division in the course of the Division's investigation of probable violations under the Underground Utility Damage Prevention Act. Such documents or information may include a list of violations and probable violations of the Act, provided that such information or documents has not been determined by the Commission or a court of competent jurisdiction to be confidential or privileged.

Article 5.

Reporting Probable Violations of the Act by Non-Gas Operators.

20 VAC 5-309-100. Reporting requirements for electric operators.

All operators of electric utility lines shall report all probable violations of the Act to the Division involving damages impacting 1,000 or more customer meters and/or resulting in injury or fatality.

20 VAC 5-309-110. Reporting requirements for telecommunication operators.

All operators of telecommunication utility lines shall report all probable violations of the Act to the Division involving damages to outside facilities affecting 1,000 or more access lines.

20 VAC 5-309-120. Reporting requirements for cable TV and cable TV and telecommunication operators.

All operators of cable TV and cable TV and telecommunication utility lines shall report all probable violations of the Act to the Division involving damages to outside plant facilities impacting 1,000 or more customers.

20 VAC 5-309-130. Reporting requirements for water and sewer operators.

All operators of water and sewer utility lines shall report all probable violations of the Act to the Division involving damages resulting in an injury, fatality, or having a serious impact on public health.

Article 6.

Emergency Excavation or Demolition.

20 VAC 5-309-140. Emergency excavation or demolition.

When excavation or demolition is required during an emergency as defined in § 56-265.15 of the Code of Virginia, all reasonable precautions shall be taken to protect underground utility lines that may be located at the site of the excavation. These precautions shall include, but are not limited to, the following:

1. Dispatched personnel or crews responding to the emergency shall notify the notification center and request an emergency locate of the underground utility lines at the earliest reasonable opportunity;
2. After arriving at the site, the person responding to the emergency shall determine the need for immediate action;
3. If immediate action is required, all reasonable precautions shall be taken to protect the underground utility lines;

These actions shall include, but are not limited to, the following:

- a. Conduct a thorough site assessment to determine the location of underground utility lines,
- b. Locate the underground utility lines with acceptable equipment, if possible,
- c. Hand dig around the underground utility lines,
- d. Directly notify the utility line operators, if necessary; and,
- e. If prudent, the excavator shall wait for marking of the excavation area by operators having utility lines in the excavation area.

Article 7.

Marking of Underground Utility Lines.

20 VAC 5-309-150. Temporary marking of underground utility lines.

All temporary markings shall, at a minimum, conform with the requirements of this article.

20 VAC 5-309-160. General marking requirements.

A. All markings shall be suitable for their intended purpose for a period of 15 working days from the time of notification by the excavator to the notification center.

B. Markings shall be made at sufficient intervals to clearly indicate the approximate horizontal location and direction of the underground utility line. However, the distance between any two marks indicating the same utility line shall not exceed 20 feet. Site conditions or directional changes of the underground utility line shall be considered to determine the need for shorter distance between marks.

C. Markings of underground utility lines shall be by means of stakes, paint, flags, or combination thereof. The terrain, site conditions, and the type and extent of the proposed excavation shall be considered to determine the most suitable means to mark underground utility lines.

D. Paint marks shall be approximately 8 to 10 inches in length and one to two inches in width except when "spot" marking is necessary.

E. A minimum of three separate marks shall be made for each underground utility line marking.

F. All valve box covers shall be marked with the appropriate color in accordance with the Act.

G. If in the process of marking an underground utility line, a customer-owned underground utility line is discovered, the operator or its contract locator shall make every effort to contact the customer to advise him of the presence of the line.

H. Where the proposed excavation crosses an underground utility line, markings shall be at intervals that clearly define the route of the underground line.

I. All markings shall extend at least 10 feet beyond the boundaries of the specific location of the proposed work as detailed on the ticket.

J. In an area designated as a historic location, stakes or flags with appropriate color coding shall be used instead of paint, to the extent practical.

K. If the use of line marking would be considered damaging to property (driveways, landscaping), "spot" marking or other suitable marking methods shall be used.

L. Markings shall be valid for an excavation site for 15 days from the time of notification by the excavator or until one of the following events occurs:

1. The markings become faded, illegible or destroyed; or
2. An emergency condition no longer exists.

M. All utility lines of the same type in the same trench owned by the same operator shall be marked individually or by a single mark. If a single mark is used, the number of the utility lines shall be indicated at every other mark.

N. Operators or their contract locators shall use all available information, including but not limited, to the installation records of utility lines to mark their facilities accurately.

O. Markings of an underground pipeline greater than 12 inches in nominal outside dimension shall include the size in inches at every other mark.

P. Duct structures and conduit systems shall be marked in accordance with the horizontal marking symbols for such structures and conduit systems set out in the National Utility Locating Contractor's Association's ("NULCA's") standards.

Q. In areas where marks would be destroyed, offset markings shall be made using horizontal marking symbols by NULCA's marking standards.

Article 8.

Supplemental Rules, etc.

20 VAC 5-309-170. Clear evidence.

"Clear evidence" as used in § 56-265.24 C of the Code of Virginia shall include, but is not limited to, visual evidence of an unmarked utility line, knowledge of the presence of a utility line, or faded marks from previous marking of a utility line.

20 VAC 5-309-180. Notification Center data update.

Every operator required by § 56-265.16:1 A of the Code of Virginia to join the notification center shall provide an update of the data relative to the operators' utility lines to the notification center as soon as possible, but no later than 15 days after a utility line is installed.

20 VAC 5-309-190. Excavator's responsibilities to avoid damage, dislocating or disturbances of utility lines.

Any person excavating around underground utility lines shall take all reasonable steps to protect such utility lines. These steps shall include, but are not limited to, the following:

1. The excavator shall plan the excavation in such a manner to avoid damage to, and minimize interference with, underground utility lines in and near the construction area;
2. The excavator shall maintain a reasonable clearance, to include the width of the utility line, if known, plus 24 inches, between the marked or staked location of an underground utility line and the cutting edge or point of any mechanized equipment, considering the known limit of control of the cutting edge or point to avoid damage to the utility line; and

3. The excavator shall provide proper support for underground utility lines during excavation activities. During backfill operations, the excavator shall use proper backfill material, ensure there is proper compaction around the utility line, and protect all utility warning tapes and tracer wires.

20 VAC 5-309-200. Requirement for trenchless excavation.

Any person conducting trenchless excavation shall take all reasonable steps necessary to protect and support underground utility lines. These steps shall include, but are not limited to the following:

1. The excavator should verify that all utility lines in the area are marked;
2. The excavator shall ensure that bore equipment stakes are installed at a safe distance from marked utility lines;
3. When grounding rods are used, the excavator shall ensure that they are installed at a safe distance (at least 24 inches plus the width of the utility line, if known) away from the marked or staked location of utility lines;
4. The excavator shall ensure sufficient clearance is maintained between the bore path and any underground utility lines during pullback;
5. The excavator shall give special consideration to water and sewer systems within the area that cannot be located accurately;

6. The excavator shall expose all utility lines which will be in the bore path by hand digging to establish location prior to commencing bore. For a parallel type bore, the excavator shall expose the utility line by hand digging at reasonable distances along the bore path;

7. The excavator shall ensure the drill head locating device is functioning properly and within its specification;

8. The excavator shall visually check the drill head as it passes through potholes, entrances, and exit pits; and,

9. If the depth indicated by the locating device is lower than the bottom of the pothole or pit, the excavator shall cease boring until the hole/pit can be hand excavated further to maintain a visual inspection of the drill head.

20 VAC 5-39-210. Operator's responsibilities to maintain accurate records.

For all new underground utility lines, excluding electric, phone, cable TV, water and sewer service lines, installed after July 1, 2001, the operator shall prepare and maintain reasonably accurate installation records of the utility line. These records shall indicate if all or a portion of the utility line has been abandoned.

20 VAC 5-309-220. Responsibility to protect and preserve marking.

Every excavator should be responsible to reasonably protect and preserve markings from the time the excavator begins work until markings are no longer required for the proper and safe excavation near the utility line.

20 VAC 5-309-230. Excavator site inspection.

Prior to excavation, excavators shall verify they are at the correct location and shall verify locate markings and, to the best of their ability, check for unmarked utility lines. If unmarked utility lines are identified, the excavator shall comply with the requirements of § 56-265.24 C of the Code of Virginia.